

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:10-CR-00179-F-1

No. 5:13-CV-00702-F

BETTY TRUESDALE STRICKLAND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

This matter is before the court on the Memorandum and Recommendation (“M&R”) [DE-111] of United States Magistrate Judge Robert B. Jones, Jr., regarding Betty Truesdale Strickland’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-86, -90].

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo* determination of those portions of the recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1). In the absence of a timely-filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

On November 8, 2016, the Magistrate Judge issued a M&R recommending that the


Government's motion [DE-92] be allowed, Strickland's Motion to Vacate [DE-86, -90] be denied, and Strickland's claims be dismissed. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the M&R and the consequences if they failed to do so. Strickland has filed no objections, and the time for doing has expired.

Upon careful review of the M&R and of the record generally, and having found no clear error, the court hereby ADOPTS the recommendation of the Magistrate Judge. It is therefore ORDERED that the Government's motion [DE-92] is ALLOWED, Strickland's Motion to Vacate [DE-86, -90] is DENIED, and Strickland's claims are dismissed.

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, the court declines to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2) (A certificate of appealability will not issue unless there has been "a substantial showing of the denial of a constitutional right."); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (Where a court has rejected the constitutional claims on their merits, a petitioner must demonstrate that reasonable jurists would find that the court's assessment of the constitutional claims is debatable or wrong, but when a court denies relief on procedural grounds, a petitioner must demonstrate that jurists of reason would find it debatable whether the court's procedural ruling was correct.).

SO ORDERED.

This, the 9th day of January, 2017.



JAMES C. FOX
Senior United States District Judge